

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

1) H. THOMAS MORAN, II,)
2) JANE M. MORAN,)
)
)
Plaintiffs,)
)
)
v.) Case No.
)
)
1) AVON CAPITAL, LLC, a Wyoming)
Limited Liability Corporation,)
)
Defendant.)

COMPLAINT

Plaintiffs H. Thomas Moran, II and Jane M. Moran for their cause of action over and against the Defendant Avon Capital, LLC, states as follows:

PARTIES AND JURISDICTION

1. The basis for jurisdiction in this Court is diversity of citizenship pursuant to 28 U.S.C. § 1338(a).
2. Plaintiffs H. Thomas Moran, II and Jane M. Moran (referred to collectively as "the Morans") are each citizens and residents of the State of Oklahoma.
3. Defendant Avon Capital, LLC ("Avon") is a Wyoming limited liability company. Based on information and belief, the members of Avon are citizens and residents of the State of Connecticut.
4. The amount in controversy is in excess of \$75,000, exclusive of interest and costs.

5. The acts and events that give rise to this action occurred in Oklahoma City, Oklahoma and venue therefore lies on the Western District of Oklahoma.

GENERAL ALLEGATIONS

Paragraphs 1 through 5 are incorporated, as if fully set forth, herein by reference.

6. On or about December 30, 2009, the Morans and Avon entered into a Membership Purchase Agreement (the "Agreement").

7. Under the terms of the Agreement, Avon agreed to purchase the Morans' membership interest (the "Membership Interest") in SDM Holdings, LLC ("SDM") for a total purchase price of Four Million Three Hundred Ninety-Five Thousand Five Hundred Two Dollars and Sixty Cents (\$4,395,502.60) (the "Purchase Price").

8. In conjunction with the execution of the Agreement, the Morans executed Assignments of Membership Interest selling, assigning, transferring and delivering one hundred percent (100%) of the Morans' Membership Interest in SDM to Avon.

9. Under the terms of the Agreement, in particular Section 1(a), Avon paid fifty percent (50%) of the Purchase Price (the "First Payment") on or about December 30, 2009.

10. Under the terms Section 1(b) of the Agreement, Avon was obligated and required to pay the remaining fifty percent (50%) of the Purchase Price (the "Final Payment") on or before January 30, 2010 (the "Final Funding Date").

11. Avon failed to pay the Final Payment, which remains unpaid.

12. The terms of the Agreement provide:

7.6 Failure to Fund. If Avon does not pay the remaining Purchase Price as outlined in Section 1(b) to Moran by January 30, 2010, Moran will keep the payment outlined in Section 1(a) and will have the absolute right, to purchase the Membership Interest from Avon for One Million, Five Hundred Thousand Dollars (\$1,500,000.00)(the 'Repurchase Price').

COUNT I – SPECIFIC PERFORMANCE

Paragraphs 1 through 12 are incorporated, as if fully set forth, herein by reference.

13. The Agreement between the Morans and Avon is a valid, enforceable contract.

14. The terms of the Agreement entitle the Morans to repurchase the Membership Interest in SDM upon Avon's failure to pay the Final Payment on or by the Final Funding Date.

15. The Morans are ready, willing, and able to perform the terms of the Agreement, in particular the payment of the Repurchase Price set forth in Section 7.6 of the Agreement, and have fulfilled all of their contractual duties to date.

16. Avon is the present owner of the Membership Interest at issue and it is within Avon's power to perform its obligations under the Agreement to resell the Membership Interest to the Morans for the Repurchase Price.

17. The Morans have no adequate remedy at law, or not one, at least, which may be full, adequate and perfect.

18. The Morans are entitled to judgment against Avon for specific performance, directing that Avon transfer the Membership Interest to the Morans upon their payment of the Repurchase Price and further directing Avon to pay the costs and

attorneys' fees of the Morans in obtaining judgment for specific performance of the Agreement, and granting the Morans any other relief to which the Morans are or may be entitled under the law.

WHEREFORE, Plaintiffs H. Thomas Moran, II and Jane M. Moran pray for judgment against Defendant Avon Capital, LLC for specific performance, directing that Defendant transfer the Membership Interest to Plaintiffs upon Plaintiffs' payment of the Repurchase Price and further directing Defendant to pay the costs and attorneys' fees of Plaintiffs in obtaining judgment for specific performance of the Agreement, and granting Plaintiffs any other relief to which they are or may be entitled under the law.

COUNT II – (IN THE ALTERNATIVE) BREACH OF CONTRACT

Paragraphs 1 through 18 are incorporated, as if fully set forth, herein by reference.

19. Under the terms of the Agreement, Avon was obligated and required to make a Final Payment in the amount of One Million Two Hundred Sixty-Four Thousand Eight Hundred Forty-Five Dollars and 72/100 (\$1,264,845.72) on or before January 30, 2010.

20. Avon failed to make the Final Payment and is in default of its obligations under the Agreement.

21. As a result of Avon's breach of the Agreement, the Morans have suffered damages in the amount of One Million Two Hundred Sixty-Four Thousand Eight Hundred Forty-Five Dollars and 72/100 (\$1,264,845.72), and have incurred attorneys' fees and costs in prosecuting this action, all of which the Morans are entitled to recover in this action.

WHEREFORE, in the alternative to specific performance, Plaintiffs H. Thomas Moran, II and Jane M. Moran pray for judgment against Defendant Avon Capital, LLC in the amount of One Million Two Hundred Sixty-Four Thousand Eight Hundred Forty-Five Dollars and 72/100 (\$1,264,845.72), as well as for Plaintiffs' costs and attorneys' fees, and any other relief to which they are or may be entitled under the law.

Respectfully submitted,

s/ Shannon K. Emmons

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